

the 8 day of October, 2003  
TESTE: LILLIE M. HART, CLERK 4:00pm  
By [Signature] D.C.

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE COUNTY**

**COMMONWEALTH OF VIRGINIA**

**v.**

**LEE BOYD MALVO,**

**Defendant.**

**Case Nos. CR 03-3089, CR 03-3090 &  
CR 03-3091**

**NOTICE AND MOTION FOR VIDEO CONFERENCING**

COMES NOW the Accused, Lee Boyd Malvo, by counsel, and moves this court on October 22, 2003, at ten o'clock a.m., or as soon thereafter as counsel may be heard, for video conferencing, and in support thereof states as follows:

1. It is anticipated that counsel for Mr. Malvo will be calling a substantial number of witnesses on his behalf, including individuals residing in the state of Washington, Louisiana, Jamaica and Antigua, among other places.
2. Significantly earlier in the litigation of this case, the court informed defense counsel that, particularly with regard to some witnesses in the more remote locations, video conferencing is a viable alternative to having these individuals travel to appear in Chesapeake for the trial.
3. Accordingly, counsel for Mr. Malvo have anticipated and committed to the court to utilize video conferencing for a number of witnesses, and take advantage of the court's generous creativity.
4. To facilitate the use of video conferencing, defense counsel have participated in two

conferences addressing the issues surrounding the use of video conferencing - one in Williamsburg and one in Chesapeake. The conferences addressed, among other things, the feasibility, logistics and costs associated with video conferencing.

5. At one such conference, a representative from the court indicated that the court would be analyzing the estimated costs of this option, and would be committing to video conferencing only if the costs could be maintained below a particular threshold amount, a goal which may or may not be feasible given all the considerations.

6. Despite the admirable goal of keeping case expenses down in this matter, cost is not the only consideration with regard to determining whether the court will pay for video conferencing, and make it available to defense counsel.

7. At most recent estimate, there are from 3 to 7 witnesses from the Caribbean who either do not have the required documents or who do not have the authority to enter the United States legally.

8. Sixth Amendment jurisprudence poignantly establishes an accused's right to Compulsory Process.

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

9. Particularly with regard to the witnesses who cannot appear to testify, not offering video conferencing when it is technologically feasible would be a constitutional violation.

WHEREFORE, the Accused respectfully requests that this court order, and commit to making video conferencing available, despite what the cost projections are determined to be.

Respectfully Submitted

Lee Boyd Malvo

By

Co-Counsel /

By \_

Co-Counsel /

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was hand delivered, this \_\_\_\_ day of October, 2003, to Robert F. Horan, Esquire, Commonwealth's Attorney, 4110 Chain Bridge Road, #123, Fairfax, Virginia 22030.

— Michael S. Arif /